

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BERNABE ENCARNACION,

Plaintiff,

- v -

**Civ. No. 9:13-CV-1000
(TJM/RFT)**

**M.D. DOCTOR SILVERBERG, Director of GMCF - DOCS;
DR. DAVID KARANDY, FSHD CMCF, DOCS; DR. CARL
KOENIGSMANN; Chief HD, DOCS; JANET M. COLLIN,
Admin. Nurse CMCF, DOCS, SUE ALDEN, R. Nurse
CMCF - DOCS; CHAMBERLAIN, R. Nurse CMCF - DOCS;
STEVEN RACETTE, Warden CMCF - DOCS, R. GLASEEN,¹
Inspector General; STEVEN FRIES, Doctor - UPSCF - DOCS;
RENEE HOLMES, R. Nurse UPSCF - DOCS; DAVID ROCK,
Warden, Upstate Correctional Facility; BRIAN FISCHER,
Commissioner New York State Department of Corrections and
Community Supervision,**

Defendants.

**THOMAS J. MCAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred by this Court to the Hon. Randolph F. Treece, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In his Report-Recommendation and Order, Magistrate Judge Treece recommended that Defendants' motion for summary judgment (Dkt. # 53) be granted in its entirety, and the action dismissed. See Rep.-Rec. & Ord., Dkt. # 57. Plaintiff filed objections to

Magistrate Judge Treece's recommendations. See Dkt. No. 58.

II. STANDARD OF REVIEW

When objections to a magistrate judge's report and recommendation are lodged, the district court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1); see also *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997) (The Court must make a *de novo* determination to the extent that a party makes specific objections to a magistrate's findings.). "[E]ven a *pro se* party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument." *Machicote v. Ercole*, 2011 WL 3809920, at * 2 (S.D.N.Y., Aug. 25, 2011)(citations and interior quotation marks omitted); *DiPilato v. 7-Eleven, Inc.*, 662 F. Supp.2d 333, 340 (S.D.N.Y. 2009)(same).

General or conclusory objections, or objections which merely recite the same arguments presented to the magistrate judge, are reviewed for clear error. *Farid v. Bouey*, 554 F. Supp. 2d 301, 306 n. 2 (N.D.N.Y. 2008); see *Frankel v. N.Y.C.*, 2009 WL 465645 at *2 (S.D.N.Y. Feb. 25, 2009). After reviewing the report and recommendation, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b).

III. DISCUSSION

Having considered Plaintiff's objections and having completed a *de novo* review of

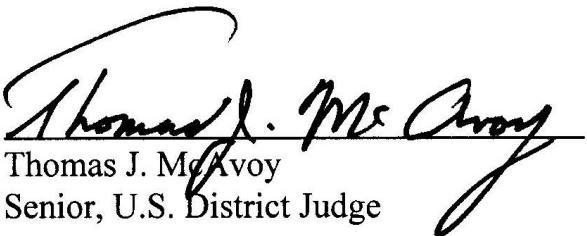
the issues raised by the objections, the Court accepts and adopts Magistrate Judge Treece's recommendations for the reasons stated in his thorough report.

IV. CONCLUSION

For the reasons discussed above, the Court accepts and adopts Magistrate Judge Treece's Report-Recommendation and Order (Dkt. # 57) in its entirety. Accordingly, Defendants' motion for summary judgment (Dkt. # 53) is GRANTED, and all claims in this action are DISMISSED. The Clerk may enter judgment in favor of Defendants and close the file in this matter.

IT IS SO ORDERED.

Dated:September 23, 2015



Thomas J. McAvoy
Senior, U.S. District Judge